**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**

**SPECIAL CIVIL APPLICATION No. 9324 of 1994**

**For Approval and Signature:**

**HONOURABLE MS. JUSTICE R.M.DOSHIT**

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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**SWARAJYA ASHRAM - Petitioner(s)**
**Versus**
**STATE OF GUJARAT & 1 - Respondent(s)**

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**Appearance :**
MR HM JADEJA for MR BJ JADEJA for Petitioner(s) : 1,
MS MINI NAIR, AGP for Respondent(s) : 1 - 2.

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**CORAM : HONOURABLE MS. JUSTICE R.M.DOSHIT**

**Date : 21/08/2007**

**ORAL JUDGMENT**

The petitioner-Swarajya Ashram, Bardoli, a public charitable trust (hereinafter referred to as, **“the petitioner Trust”**) registered as such, has challenged

the order dated 8th February, 1994 made by the State Government under Section 3 of the Gujarat Agricultural Lands Ceiling Act, 1960 (hereinafter referred to as, **"the Act of 1960"**).

It appears that the petitioner Trust has been settled with the main object of general upliftment of the people, education, gaushala, etc. In the year 1965, the petitioner Trust acquired certain parcels of land of village Tajpor-Bujrang, taluka Bardoli from the concerned vendors by registered sale deeds. The said sale were questioned by the Mamlatdar, Vyara; as being made in contravention of the Bombay Prevention of Fragmentation and Consolidation of Holdings Act, 1947 (hereinafter referred to as, **"the Fragmentation Act"**). The said proceedings culminated into order dated 20th September, 1979 made by the Deputy Collector, Vyara. A fine of Rs.50=00 was imposed upon the petitioner Trust but was allowed to retain the lands purchased by it. In the mean time, in view of the amendment to the Gujarat Agricultural Lands Ceiling Act, 1960 by Act No.2 of 1974, the petitioner Trust was required to declare its holding. Indisputably, the total holding of the petitioner

Trust was in excess of the ceiling area determined under the Act of 1960. The petitioner Trust, engaged in the activities of agricultural education and gaushala, created a separate trust in the name of Swarajya Ashram, Bardoli Gaushala Trust. The same was registered as such on 30th March, 1977. The petitioner Trust applied for exemption as envisaged by Section 3 of the Act of 1960. As on the specified date the petitioner Trust did not hold any land (on account of proceedings pending under the Fragmentation Act), the exemption applied for by it came to be filed by the order of the Deputy Collector made on 17th September, 1980. Since then, the petitioner Trust renewed its application for exemption on 9th February, 1987. The said application came to be rejected by the Collector, Surat as time-barred. The said order has been confirmed in appeal before the State Government by the impugned order. The State Government did observe that the petitioner Trust was engaged in basic education and also maintained a Gaushala, but the petitioner Trust did not hold any land as on 1st April, 1976 and it did not apply for exemption within 90 days from its acquiring the lands. The appeal came to be dismissed accordingly.

Mr.Jadeja has submitted that though the petitioner Trust did hold the lands as on the specified date (1st April, 1976), on account of the aforementioned proceedings under the Fragmentation Act the mutation entries in respect of the lands acquired by the petitioner Trust, made in the name of the petitioner Trust, were cancelled. The said entries came to be restored after the aforementioned order dated 20th September, 1979 made by the Deputy Collector, Vyara. He has submitted that the application dated 9th February, 1987 for grant of exemption under Section 3 of the Act of 1960 was made within 90 days therefrom i.e. Within 90 days from the date the Trust became eligible for exemption under Section 3 of the Act. The application made by the petitioner Trust, therefore, ought to have been granted.

The petition is contested by Ms.Nair. She has supported the impugned order. She has submitted that the application for exemption was made on 9th February, 1987. It is not shown that the said application was made within 90 days from the date the petitioner Trust became eligible to such exemption.

Section 3 of the Act of 1960 provides for exemption i.e. the categories of land which shall be exempted from the provisions of that Act. Clause(d) of sub-section (1) thereof provides for **"lands which are the property of a public trust for an educational institution imparting education in agriculture, to such extent as may be prescribed"**. Clause(dd) provides for such exemption in respect of the lands held by a Panjrapole or a Gaushala, inter alia, for the purpose of grazing of cattle or storage of grass for cattle. Clause (ddd) (inserted by Gujarat Act No.2 of 1974) refers to the lands utilised for maintenance of Panjrapole or Gaushala and reads as under :-

**"lands being lands utilised for maintenance of Panjrapole or Gaushala, which were exempt from the provisions of this Act immediately before the specified date by reason of their being the property of an institution for public religious worship registered as a public trust under the Bombay Public Trust Act, 1950, provided such institution creates a separate trust in respect of such lands for the purposes of Panjrapole or Gaushala applies within a**

**period of ninety days from the specified date, for the registration of such trust under the said Act, to the Deputy or Assistant Charity Commissioner having jurisdiction and endeavours to get such separate trust registered under the said Act within a period of one year from the specified date;”**

Sub-section (1A) of Section 3 of the Act of 1960 provides for period within which application for exemption under Section 3(1) shall be made. Clause (ii) thereof provides for a period of 90 days from the date on which the lands become eligible to exemption.

In the submission of Mr.Jadeja, the lands of the petitioner Trust became eligible to exemption only after completion of the proceedings under the Fragmentation Act, by order dated 20th September, 1979 and the mutation of the lands in the name of the petitioner Trust. If the application for exemption were made within 90 days therefrom, the same was well within the period of limitation and could not have been rejected as time barred.

As recorded hereinabove, indisputably the

petitioner Trust acquired the Gaushala lands in the year 1965 by registered sale deeds. Therefore, it cannot be said that the petitioner Trust did not hold any land on the specified date i.e. on 1st April, 1976. True, the said transfers were subject matter of scrutiny under the Fragmentation Act. Nevertheless, unless the said transfers were held to be illegal by the competent authority, the petitioner Trust could not have been divested of the said lands. The said transfers made in the year 1965 were upheld and the petitioner Trust was allowed to retain the lands by order dated 20th September, 1979. Hence, as on 1st April, 1976 the petitioner Trust did hold the agricultural lands it had purchased in the year 1965. It is also not in dispute that the Swarajya Ashram, Bardoli Gaushala Trust came to be registered as such on 30th March, 1977 i.e. within one year from the specified date. In my view, therefore, the lands held by the petitioner Trust did qualify to exemption as envisaged by clause (ddd) of sub-section (1) of Section 3 of the Act of 1960. May be, the petitioner Trust renewed its request for exemption on 9th February, 1987 long after the expiry of the period of 90 days, its original application for exemption having

been made within 90 days from the specified date, which was not processed on account of the proceedings under the Fragmentation Act, the application could not have been rejected as time-barred.

As recorded hereinabove, the authorities below did confirm that the petitioner Trust imparted basic education and was also maintaining a 'Gaushala'. The petitioner Trust created a separate trust for the purpose of Gaushala and got it registered as such within one year from the specified date. The lands in question were, therefore, eligible to exemption as envisaged by sub-section (1) of Section 3 of the Act of 1960.

For the aforesaid reasons, the petition is allowed. The impugned order dated 8th February, 1994 made by the State Government is quashed and set-aside. The authority below shall make appropriate order for grant of exemption for the lands utilised for Gaushala as envisaged by clause (ddd) of sub-section (1) of Section 3 of the Act of 1960. The aforesaid exercise shall be completed within three months from today. Rule is made absolute in the above terms. The parties

will bear their own cost.

**(Ms. R.M.Doshit, J.)**

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